MEDICAL JURISPRUDENCE†

HARTLEY F. PEART, ESQ.
San Francisco

A Physician Has No Authority to Engage Another Physician For a Patient Which He is Attending in the Absence of Express Authority From the Patient

The Appellate Department of the Superior Court of Los Angeles County on November 13, 1945, in an action entitled McManus vs. Eymil rendered a decision involving the authority of an attendant physician to engage another physician as a consultant without express authority from his patient. The Court held that in the absence of such authority the consulting physician who was called in without express authority from the patient could not look to the patient for payment of his fee. The decision of the Court was as follows:

Dr. A admittedly was not engaged directly by defendant or defendant's daughter to take care of defendant's wife. He states that he visited the patient at the request of Dr. B, the attending physician, who had been employed by defendant.

The evidence was insufficient to show that Dr. B had express authority from either defendant or defendant's daughter to engage Dr. A as consulting physician. There is no showing that defendant had ever heard of Dr. A or knew of his services until he received a bill from him. There is no showing that defendant at any time ratified the employment of Dr. A or agreed to pay for his services.

In the absence of express authority, a physician employed to take care of a patient has no implied authority to engage another physician at his employer's expense without the latter's knowledge or consent. (Lindsay v. Freda (1923), 2 D.L.R. 1180; Webb v. Porto Rican American Tobacco Co. (1910), 16 Porto Rico 378, 388; Bond v. Hurd (1904), 31 Mont. 314, 78 P. 579, 582; Johnson v. Roberts (1925), 212 Ala. 535, 103 S. 563, 564; Wagner v. West Penn. Power Co. (1933), 110 Penn. Supp. 221, 168 Atl. 478, 480.) Of course, we are dealing with a case where it was not impossible to seek consent. (In this connection see Richter's Estate (1928), 11 Penn. D. & C. Rep. 485, 490.) There are no California cases on this point involving physicians, but in the analogous situation involving attorneys, the rule is well established that an attorney has no authority by virtue of his retainer to employ another attorney at the expense of his client without previous authority or assent of the client. (Cormac v. Murphy (1922), 58 Cal. App. 366, 369, and cases cited; Johnson v. California I.M.T. Assn. (1938), 24 Cal. App. 2d 322, 335, 340; see also 90 A.L.R. 265.)

No account stated was created between Dr. A and defendant by the fact that Dr. A sent bills to which defendant failed to object for several months. The creation of an account stated presupposes an existing debt between the parties. (Bennett v. Potter (1919), 180 Cal. 738, 745; Wine Packing Corp. v. Voss (1940), 37 Cal. App. 2d 528, 539.) As we have noted above, no such condition existed in this case.

The judgment is reversed and the cause is remanded for a new trial, appellant to recover his costs of appeal.

As noted in the opinion of the Court this is a decision of first impression in California although authorities to the same effect are cited in other jurisdictions. The result of the decision makes it apparent that in any case where an attending physician desires to call in a consultant the consultant should make arrangements for payment of his services with the attending physician or with the patient. If there is no express authority from the patient and employment by the patient of the consulting physician, he will not be permitted to collect a fee from the patient and will therefore have to look only to the attending physician for payment. It is therefore imperative that definite arrangements be made in advance so that misunderstandings of the type involved in the above case will be avoided.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions, and analyses of legal points and procedures of interest to the profession.

Government Medical Care System Declared Failure In New Zealand

Wellington (N.Z.)—Dec. 1.—In six years of operation New Zealand's system of state medical care has ballooned costs, jammed hospitals, promoted a physicians' racket of large dimensions and speeded the development of a nation of nostrum takers. It has not cut sickness and has not provided adequate medical service.

What happens when a nation goes over to free medical care is shown by figures covering admittances to the national hospital system. In 1932 admissions were 79,000; in 1944, latest year for which statistics are available, they were 171,000. Undoubtedly today they are higher.

More Difficult to Get

Yet today, despite a major wartime increase of hospital beds, the New Zealander who needs hospital attention finds it harder to get because the administrative chiefs say their beds are jammed with the aged and chronically ill, senile and other long-term patients who ordinarily would have received care at home, but today are dispatched to hospitals by families eager to be quit of them.

Coincidentally hospitals lack accommodations for such vital cases as tuberculosis sufferers who are crowded out by these permanent dwellers. Silverstream Hospital, near here, earlier operated by the American Navy to treat men of our force in the Solomons and now taken over by Wellington Hospital in an effort to relieve pressure, already is well filled with these cases.

Cost Multiplies

The sharply rising costs of medical care are shown in the fact that the Socialist government originally budgeted on the basis of $5,000,000 being sufficient annual payment for all physicians' services. Today the budget exceeds $25,000,000. In part this is laid to overconsultation of physicians by anxious patients whose opportunity of nursing their neuroses has been enlarged by the free system. . . . —Quentin Pope in Los Angeles *Times*, December 2.

Scientific Research—Some Comments

Although scientific researchers have existed since the days of ancient Greece, until the last three generations their numbers were so few and their activities so diverse that they were not often classified as members of the same profession. But with the organization of industrial research laboratories, having as their object the improvement of old, and the invention of new processes, products and machines, scientific research began to be regarded as a profession comparable to the profession of engineering, for example.

The field of industrial chemistry, notably in Germany, was perhaps the first in which professional researchers became relatively numerous. . . .

Herbert Hoover (in *The Times* of Sept. 19, 1940) said: "A thousand openings already beckon to action by applied science to use what we already know. Therefore the second step is more support to applied science research. We probably spend $200,000,000 on that, mostly through government and industry. But that is only 15 per cent of our cigarette bill, and with the depression that has slackened, whereas it should be increased."

The first step of which he spoke was research in pure science as to which he said: "And at once I come to the first step in industrial efficiency. That is more support to research in pure science. In all of our universities and our scientific institutions I doubt if we are spending $20,000,000 a year. That is about 7 per cent of our allowance for cosmetics." . . .—Halbert P. Gillette in Los Angeles *Times*, November 18.

We've Had Enough Czars

The proposal in the House Banking Committee to create a Federal "czar" to solve the housing shortage is better calculated to tie more knots in the problem. We have tried out a few "czars" during the war; the experience does not make us want more of them. Leave the "czars" to baseball; there they are that industry's own business; the public does not have to go to baseball games unless it wants to.

The public is in dire need of more housing. It wants houses, not czars, and right away. *General experience with governmental control is that it slows everything up with snarls of red tape, even where the intentions are the best in the world.* . . .—Excerpts from an editorial in San Francisco *Chronicle*, December 4.